

CLYDE K. KOBBERMAN

IBLA 81-715

Decided October 8, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting simultaneous noncompetitive oil and gas lease application M 49009.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

2. Administrative Authority: Laches--Estoppel--Laches
The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost through lack of enforcement by some of its officers.

APPEARANCES: Bruce A. Budner, Esq., Dallas, Texas, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Clyde K. Kobbeman filed a simultaneous noncompetitive oil and gas lease application for parcel MT 1 in the September 1980 drawing in the Montana State Office, Bureau of Land Management (BLM). This application was drawn with first priority and assigned serial number M 49009.

On April 30, 1981, BLM issued a decision rejecting Kobbeman's application because questions (d), (e), and (f) 1/ were not completed on the back of the application by checking appropriate boxes, which violates 43 CFR 3112.2-1(a) (1980). Kobbeman appealed this decision.

[1] We agree that appellant's application was not completed and that BLM therefore properly rejected it. A simultaneous noncompetitive oil and gas lease application must be completed (43 CFR 3112.2-1(a)) or it must be rejected as an improper filing. 43 CFR 3112.6-1(a).

1/ The portion of the application in question is as follows:

"UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes) [emphasis in original]:

* * * * *

"(d) Does any party, other than the applicant and those identified herein as other parties in interest, own or hold any interest in this application, or the offer or lease which may result? Yes ☐ No ☐.

"(e) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which the undersigned has assigned or agreed to assign, any interest in this application, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest? Yes ☐ No ☐.

"(f) Does the undersigned have any interest in any other application filed for the same parcel as this application? Yes ☐ No ☐.

Thus, failure to complete items (d), (e), and (f) on the back of the application justifies its rejection.

Simon A. Rife, 56 IBLA 378 (1981); Edward Marcinko, 56 IBLA 289 (1981); Vincent M. D'Amico, 55 IBLA 116 (1981) (appeal pending).

Appellant's application was filed on his behalf by the Federal Energy Corp. (FEC), an oil and gas lease filing service. Appellant's statement of reasons alleges that FEC attached to his application a copy of a document entitled "Addendum to Service Agreement with Federal Energy Corp.," executed on July 8, 1980, by applicant and his wife. A copy of this document accompanies the statement of reasons. However, the record contains no such attachment.

We have additional reason to doubt the allegation that an executed separate statement accompanied appellant's application. The present record, and records of other cases involving the applications of FEC's clients during the same period 2/ reveal that FEC had adopted a procedure under which it filed a general information package concerning its clients' applications with BLM State offices in advance of the drawings. FEC apparently retained executed copies of the documents relating to each client in its files.

Specifically, the package included a blank copy of its standard service agreement with its clients, a copy of its published brochure

2/ We refer to the records in Vincent M. D'Amico, *supra* (IBLA 81-186, 81-190), and in Janet A. Rodgers, IBLA 81-792, issued with this decision.

describing its services, a list of its clients, and a document entitled "Statements of Qualifications," which is otherwise identical with the "Addendum to Service Agreement" and which provides as follows:

"STATEMENTS OF QUALIFICATIONS"

Undersigned certifies as follows:

(a) I hereby grant FEC the authority to sign all "Simultaneous Oil & Gas Lease Applications" (form 3112-1) being submitted on my behalf as if I had signed same.

(b) I am a citizen of the United States; an association of such citizens; a corporation organized under the laws of the United States, or any State or Territory thereof; or a municipality.

(c) I am at least 21 years of age.

(d) Applicant is in compliance with acreage limitations set forth in 43 CFR 3101.1-5 and 3101.2-4. (I do not hold more than 246,080 acres in any one state.)

(e) [3/] Does any party, other than yourself and those identified herein as other parties in interest, own or hold any interest in any applications being submitted on your behalf by FEC, or any offer or lease which may result? Yes
No

(f) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which you have assigned or agreed to assign, any interest in any applications being submitted on your behalf by FEC, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest? Yes No

(g) Are you filing applications or do you have any interest in other applications being filed that may be in conflict with those being submitted on your behalf by FEC? Yes No

3/ Questions (e), (f), and (g) on the "Statements of Qualifications" correspond approximately to questions (d), (e), and (f) on the application.

Since the executed "Addendum" which appellant alleges was filed with his application is, except for its title, the same as this "Statements of Qualifications," the "Addendum" may well have been taken from the file copy retained by FEC, but it was not filed with appellant's individual application.

Under 43 CFR 3102.2-6(b) an agency such as a filing service which has a uniform agreement with several applicants may file a single copy of the agreement with BLM in lieu of filing a personally signed copy of the agreement or a personally signed statement from each applicant, provided that it also files a list of its clients. Thus, FEC's filing of its service agreement and information brochure apparently conformed to the procedure established by this section.

However, neither this section, which is expressly limited to the question of how to file agency statements, nor any other provision of the regulations, authorizes a filing service to state the qualifications of its clients to apply for a particular parcel by executing general statements with them in advance of drawings and then filing a blank reference copy with BLM along with a list of its clients' names. Nothing in the regulations allows a filing service to invent its own method of application or otherwise to modify the prescribed procedure. BLM's application form expressly directs an applicant to "check appropriate boxes" (emphasis in original) as part of his certification. BLM may properly insist that an applicant comply strictly with the instructions on its application to check the boxes on the application itself and may reject nonconforming applications. To hold otherwise

would allow others to invent divergent ways to file applications. In view of the vast number of applications handled by BLM each month, the result of such indulgence could be chaos.

For example, 51,810 applications were filed with the Montana State Office, BLM, in September 1980 alone. In October 1980, the Wyoming State Office received 345,602 applications. When such numbers are involved, it is reasonable for the Department not to take extra steps to protect those who do not comply with its application instructions. See Federal Energy Corp., 51 IBLA 144 (1980). The need to process applications efficiently at a minimum of taxpayer expense justifies BLM's insistence on strict compliance with its filing procedures.

Even if we accepted his allegation that he submitted it, appellant's use of a separate statement to answer these questions would not satisfy the requirement that the application be completed. Regulation 43 CFR 3102.2-7, on which appellant principally relies, does no more than to allow an applicant to list the names of other parties in interest on a separate sheet. It does not authorize him to substitute an alternative document for the approved application form. Moreover, nothing in the regulations suggests that an applicant may use a separate sheet to certify that he has no interest in any other offer for the same parcel as he is required to do by question (f).

[2] The fact that other BLM state offices may improperly have accepted similar filings in the past does not alter the result here. BLM's right to insist on a completed application, in accordance with

43 CFR 3112.2-1(a) is not vitiated or lost through lack of enforcement or by the acquiescence of some of its officers or agents. Vincent M. D'Amico, supra; 43 CFR 1810.3(a).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bernard V. Parrette

Chief Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

